## NOT FOR PUBLICATION

## UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

	)	
NEW JERSEY DEPARTMENT OF	)	
ENVIRONMENTAL PROTECTION and	)	
THE ADMINISTRATOR OF THE NEW	)	
JERSEY SPILL COMPENSATION FUND,	)	Hon. Harold A. Ackerman
	)	
Plaintiffs,	)	Civil Action No. 06-1753 (HAA)
	)	
V.	)	<b>OPINION AND ORDER</b>
	)	ADOPTING MAGISTRATE
	)	JUDGE'S REPORT AND
VIACOM, INC., PHILLIPS ELECTRONICS	)	<b>RECOMMENDATION</b>
NORTH AMERICA CORPORATION, "ABC	)	
CORPORATIONS" 1-10 and JOHN DOES	)	
1-10,	)	
	)	
Defendants.	)	
	)	

## **ACKERMAN, Senior District Judge:**

This matter comes before the Court on the motion to remand filed by Plaintiffs New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund ("Plaintiffs"). The Court referred this motion to Magistrate Judge Mark Falk, who entered a written Report and Recommendation ("R&R") on November 3, 2006. Magistrate Judge Falk recommended that Plaintiffs' motion be granted and that this case be remanded to the Superior Court of New Jersey. The docket indicates that both Plaintiffs and Defendants have been served with the R&R, and that no objections to the R&R have been filed within the 10-day period established by Federal Rule of Civil Procedure 72(b) and Local Civil Rule 72.1(c)(2).

A court must make a *de novo* determination of those portions of the R&R to which

objection is made and "may accept, reject, or modify, in whole or in part, the findings or

recommendations made by the Magistrate Judge." L. Civ. R. 72.1(c)(2); see also 28 U.S.C. §

636(b)(1)(C); Fed. R. Civ. P. 72(b). While this Court need not review a Magistrate Judge's

report before adopting it when no objections have been filed, Thomas v. Arn, 474 U.S. 140, 149

(1985), the Third Circuit has held that "the better practice is to afford some level of review to

dispositive legal issues raised by the report," *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir.

1987). "[I]t must be assumed that the normal practice of the district judge is to give some

reasoned consideration to the magistrate's report before adopting it as the decision of the court."

*Id.* at 878.

This Court has carefully reviewed Magistrate Judge Falk's R&R. As Magistrate Judge

Falk observed, the Defendants have not met the "special burden" required of private parties

seeking removal under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). Specifically,

Defendants have failed to establish that the discharge or disposal of waste on the site occurred

under the "direct and detailed control" of a federal officer. R&R at 5. After a thorough review

of the record and the R&R, the Court agrees with Magistrate Judge Falk's reasoning and

conclusions.

It is therefore hereby ORDERED that Magistrate Judge Falk's November 3, 2006 Report

and Recommendation is ADOPTED and Plaintiffs' motion to remand is GRANTED. It is hereby

further ORDERED that this case is REMANDED to the Superior Court of New Jersey.

Newark, New Jersey

Dated: December 7, 2006

/s/ Harold A. Ackerman

U.S.D.J.